Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Clarification of Clerical Changes to 47 C.F.R. § 54.307 and For Direction to USAC	)	CC Docket No. 96-45
	)	
	)	

COMMENTS OF ACS OF ALASKA, INC., ACS OF FAIRBANKS, INC., ACS OF THE NORTHLAND, INC. AND ACS OF ANCHORAGE, INC.

ACS of Alaska, Inc., ACS of Fairbanks, Inc., ACS of the Northland, Inc. and ACS of Anchorage, Inc. (collectively, "ACS"), through counsel, hereby submit their initial Comments in response to the Public Notice in the above-captioned proceeding.[1] In its June 29, 2005 letter (the "June 29 Letter") to the Wireline Competition Bureau, General Communications, Inc. ("GCI") requested a significant change in Federal Communication Commission (the "Commission") policy by proposing to reinsert language (the "Deleted Language") that had been deleted from the end of Section 54.307(a)(3) of the Commission's rules in November 1999.[2] The Commission should deny GCI's request and reaffirm its decision to remove the Deleted Language. In the alternative, the Commission should commence a rulemaking proceeding before making any new changes to Section 54.307(a)(3).

I. REMOVAL OF THE DELETED LANGUAGE WAS NECESSARY TO PRESERVE COMPETITIVE NEUTRALITY OF UNIVERSAL SERVICE

By focusing on the unusual procedural history of the Deleted Language, GCI

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[1] *Request for Clarification of Clerical Changes to 47 C.F.R. § 54.307 and for Direction to USAC*, Public Notice, DA 05-2184 (rel. July 27, 2005).

[2] 47 C.F.R. § 54.307(a)(4) (1998) ("The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier."). As explained herein, this subsection has been renumbered as subsection (a)(3).

attempts to force through a significant change to current Commission policy without full public participation and Commission deliberation. The Commission should focus not on the procedural issues, but rather on the fact that reinsertion of the Deleted Language would create a rule that violates the principle of competitive neutrality – a problem of which GCI is well aware. Competitive neutrality is one of the fundamental principles for universal service support,[3] and in the context of Section 54.307(a), the Commission has interpreted this principle to mean that competitive eligible telecommunications carriers ("CETCs") and incumbent local exchange carriers ("ILECs") should receive the same amount of per-line support for lines served in the same service area.[4]

Implementation of the Deleted Language would have the absurd consequence that CETCs would receive more support on a per-line basis than ILECs for lines in the same service area, in violation of competitive neutrality.[5] The Commission and GCI were aware of this potential problem as early as February 1999, some nine months prior to the rule change. The Universal Service Administrative Company ("USAC"), on whose board GCI held, and still holds, a seat, pointed out this problem prior to the *Ninth Report & Order*, wherein the Deleted

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3 47 U.S.C. § 254(b)(7) (authorizing the Joint Board and the Commission to adopt other principles of universal service); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, at ¶ 21, 47 (rel. May 8, 1997) (adopting the principle of competitive neutrality and defining it as follows: "COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

4 *See Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, ¶ 90 (rel. Nov. 2, 1999) (the "*Ninth Report & Order*").

5 *See, e.g.*, Letter from Robert Haga, Secretary & Treasurer of USAC, to Irene Flannery, Chief, Accounting Policy Division, FCC, 2 (Feb. 11, 1999) (providing a numerical example of this irrational result) (attached hereto as Attachment A).

Language was removed.[6] USAC wrote to the Commission seeking clarification of the implementation of then Section 54.307(a)(4).[7] In particular, USAC realized that when ILECs and CETCs accurately reported working loops, reflecting lines captured by CETCs, operation of the Deleted Language would cause CETCs to receive more support on a per-line basis than the ILECs for lines in the same service area.[8] Removal of the Deleted Language therefore was necessary to preserve competitively neutral funding and to ensure that ILECs were not inappropriately penalized for line loss.

II. REINSERTION AND IMPLEMENTATION OF THE DELETED LANGUAGE WOULD ENDANGER CRITICAL NETWORK INFRASTRUCTURE, HARM COMPETITION AND CREATE A RULE THAT IS OVERLY BURDENSOME AND IMPRACTICAL

In addition to creating a rule that would violate a fundamental principle of universal service, GCI's proposed revision of Section 54.307(a)(3) would disserve the public interest. In particular, the rule embodied by the Deleted Language is a substantial threat to the continued availability of critical network infrastructure and to the competition generated by the availability of such infrastructure. It also would be overly burdensome and impractical to implement. Moreover, GCI fails to allege any potential public benefit of such a rule, a strong indication that GCI's motives are aimed solely at gaining competitive advantage. Given the

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[6] *Ninth Report & Order* at Appendix C. GCI's reference to misplaced ellipses in the Federal Register is confused. Although it is true that the version of the *Ninth Report & Order* published in the Federal Register inadvertently contained ellipses after subsection (a)(3) and that such ellipses sometimes act as placeholders for unmodified text, it is clear that no further text belonged in revised Section 54.307. Federal-State Joint Board on Universal Service, 64 Fed. Reg. 67416, 67431 (Dec. 1, 1999). New subsection (a)(3) is substantially identical to the first sentence of prior subsection (a)(4) and it clearly replaced that subsection. In 2004, after the Commission realized that it had mistakenly omitted an instruction to delete old subsection (a)(4), it published a correction to remove the text of that subsection. Federal-State Joint Board on Universal Service, 69 Fed. Reg. 34601, 34601-34602 (June 22, 2004).

[7] Attachment A at 1.

[8] *Id.* at 2.

substantial burdens associated with the Deleted Language, as well as the lack of potential benefits therefrom, the Commission should deny GCI's request.

ILECs rely on universal service support to help maintain and upgrade existing infrastructure. An ILEC receives high-cost loop support only to the extent that its study area average costs per loop exceed the national average by 115 percent.[9] When an ILEC loses a subscriber to a CETC, the ILEC is compelled to maintain the existing line for several reasons. First, it is a carrier-of-last resort, and as such, it has obligations to be ready to serve all customers on request. Second, it is motivated to protect its existing investment and wants to be ready to serve the customer if it succeeds in winning him or her back from the CETC. If a subscriber switches to a CETC but later decides to request service from the ILEC, the ILEC needs to have an operational line ready to provide such service. Third, the ILEC is expected to provide other competing carriers with access to quality facilities on a UNE basis to enable more competition in the marketplace. Together, these facts mean that if a CETC captures from the ILEC a subscriber line for which the ILEC was receiving universal service support, the ILEC must maintain that subscriber line at substantial expense or forego the ability to compete for that customer.

Elimination of the ILEC's universal service support would diminish vital resources necessary to maintain and to upgrade the ILEC's network. The ILEC would have to choose between cutting back on maintenance of and investment in subscriber lines to customers that it no longer served or reducing maintenance of and investment in its overall network. If the ILEC decided to forgo maintenance and investment for such subscriber lines and those lines fell into disrepair, there would be fewer competitive alternatives available to those customers since

[9] 47 C.F.R. § 36.631. Because of the operation of the cap on rural high-cost support, actual costs per line must be substantially higher in order for an ILEC to qualify for high-cost loop support. *See Universal Service Monitoring Report*, CC Docket No. 98-202, 3-3 (rel. Nov. 23, 2004).

service over the ILEC's facilities would be impaired. On the other hand, reducing maintenance of the entire network would compromise network-wide integrity and competitiveness. In both cases, insufficient universal service support would harm not only the ILEC's ability to compete but also would limit the competitive opportunities of other carriers seeking to provide service over the ILEC's facilities. Thereby, reinsertion of the Deleted Language threatens both the continued availability of critical network infrastructure and competition in the market.

In addition, implementation of the rule embodied by the Deleted Language would be both burdensome and impractical. GCI acknowledged this point in its June 29 Letter when it pointed out that USAC does not have a mechanism for enforcing such a rule.[10] There is no way to verify the accuracy of CETC claims as to which subscribers it has captured from an ILEC and which are new subscriber lines. Thus, reinstatement of the Deleted Language could result in support being deducted from the ILEC *even when the CETC has not "captured" any customers from the ILEC*. For example, new CETC subscribers simply may be new residents to the service area or have purchased a second phone line or subscribed for wireless service in addition to wireline service, and thus may not have discontinued service from the ILEC at all.[11] Moreover, the ILEC would not have information as to who the CETC's customers are, sufficient to confirm whether the CETC has captured an ILEC customer. CETC claims of captured lines would have to be audited month by month for accuracy. USAC also identified these problems in its February

[10] June 29 Letter at 3.

[11] In fact, the meanings of "captured" and "new" under Section 54.307 are so vague that their definitions are the subject of an open proceeding at the Commission. *Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307 et seq.*, RM No. 10522, DA 02-2214 (Wireline Comp. Bur. Sept. 9, 2002).

1999 letter to the Commission.[12] In cases where the ILEC actually has lost no lines, the ILEC should continue to receive universal service support under any interpretation of or pursuant to any revision of Section 54.307(a). Reinsertion and implementation of the Deleted Language would lead to an outbreak of factual disputes between ILECs and CETCs.

In the face of such burdens, GCI alleges no public interest benefits to justify reinsertion of the Deleted Language. The most significant consequence of GCI's proposal is that its competitors will lose much-needed universal service support. For instance, in ACS's rural markets, most of which are high-cost, where ACS already has lost substantial market share to GCI, depriving ACS of universal service support would have a devastating effect. ACS would have substantially diminished funds with which to maintain and upgrade its network, especially given the fact that GCI has announced its intention to transition its customer base to its own circuit-switched cable telephony plant.[13] A market with weakened competitors is the principal benefit GCI realizes from such a rule.

With such significant burdens and the absence of any public interest benefit, reinserting the Deleted Language cannot be justified. It would be more appropriate to insert language to the effect that ILECs shall continue to receive support when a CETC captures lines from an ILEC regardless of whether a CETC provides service over its own facilities. Given that the Commission has limited resources, however, and already is considering the operation of the rural high-cost fund in another proceeding, there is no reason to devote further Commission resources to this issue at this time. The Commission, therefore, should deny GCI's proposal, or

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[12] Attachment A at 1.

[13] In the non-rural Anchorage market, GCI already has moved a substantial number of its customers off UNE loops and onto GCI's independent facilities. It is unclear from the June 29 Letter whether GCI is addressing only high-cost loop support, which ACS does not receive in Anchorage, but ACS's ICLS support could be at risk if GCI tries to apply the logic of its argument to other forms of interstate support.

in the alternative, the Commission should commence a rulemaking proceeding to address all potential changes to Section 54.307(a)(3) in the broader context of the distribution of universal service generally. Only through such further proceedings would all potentially affected parties receive adequate notice and have an opportunity to be heard.

III. FURTHER DIRECTION TO USAC IS UNNECESSARY

GCI unfairly characterized USAC's response to Matanuska Telephone Authority's ("MTA") inquiry as setting forth new policy and as being effective "retrospectively rather than prospectively."[14] USAC limited its response to MTA by describing USAC's practices "[a]t this time."[15] In addition, USAC stated that any measures it would take in order to implement Section 54.307 would be implemented "on an on-going basis" with adjustments for overpayments "on a retro-active basis."[16] GCI's characterization therefore is misleading and the Commission need not provide further direction to USAC on the implementation of Section 54.307(a).

IV. CONCLUSION

For the forgoing reasons, ACS respectfully requests that the Commission deny GCI's request to reinsert the Deleted Language and that it reaffirm its current rules and policies. In the alternative, ACS respectfully requests that the Commission commence a rulemaking proceeding to address all potential changes to Section 54.307(a)(3) of the Commission's rules in a comprehensive manner, including potentially adding language to Section 54.307(a)(3) to clarify an ILEC's right to receive universal service support for subscriber lines that it must maintain regardless of service provided by a CETC over its own facilities.

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[14] June 29 Letter at 3.

[15] *Id.* at Exhibit A, 4.

[16] *Id.*

Respectfully submitted,

ACS OF ALASKA, INC., ACS OF FAIRBANKS, INC., ACS OF THE NORTHLAND, INC. AND ACS OF ANCHORAGE, INC.

/s/

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Dated: August 17, 2005

Attachment A

USAC
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Robert Haga
Secretary & Treasurer
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February 11, 1999

Ms. Irene Flannery
Chief, Accounting Policy Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C., 20554

Re: Clarification of Section 54.307

Dear Ms. Flannery:

Several parties have questioned USAC regarding the operation of Section 54.307 of the Commission's rules. As a result of these inquiries, USAC's High Cost and Low Income Committee authorized the corporation to seek clarification of Section 54.307 as it relates to the calculation of Universal Service support for both the competitive eligible telecommunications carrier (CETC) and the incumbent local exchange carrier (ILEC) in situations where both carriers are eligible recipients of support.

Specifically, we seek clarification of the phrase "captures an incumbent local exchange carrier's (ILEC) subscriber lines" in the calculation of support for the CETC.[1] Does the term "capture" mean only instances where the subscriber abandoned the ILEC's service for the CETC, or does it include instances where the subscriber adds service from the CETC in addition to its ILEC service (e.g., a second wireline service or wireless service)?

Additionally, USAC seeks clarification of the Section 54.307(a)(4) calculation methodology. Section 54.307(a)(4) requires that the amount of universal service support provided to an ILEC be reduced by an amount equal to the amount provided to such CETC for the lines that it captures from the incumbent. Did the Commission intend for USAC to calculate a per line amount for the CETC as described in Section 54.307 (a)(2), multiply the resulting amount by the number of captured lines, and subtract that amount from the support originally calculated for the incumbent per Section 54.307 (a)(4)?

1 47 C.F.R. § 54.307(a).

The current rules operate such that ILEC "A" and CETC "B" would report their respective number of working loops as of December 31 of the previous year[2] (this assumes ILEC "A" and CETC "B" are both eligible telecommunications carriers providing service in ILEC "A's" serving area).[3] If ILEC "A" reports 800 lines and has total high cost support of $8,000 per month, the resulting per line support amount is equal to $10 per line per month. CETC "B" for that same period reports 200 customer lines in the service area, 100 of which are new customers and 100 of which have been "captured" from ILEC "A." The amount of support for CETC "B," at $10 per line, would then be $2000.[4] USAC then deducts the support amount associated with CETC "B's" captured lines from ILEC "A's" support.[5] ILEC "A's" support amount is thus adjusted to $7,000 per month ($8,000 minus $1,000 support associated with CETC "B's" 100 captured lines). Thus the operation of the rules provide $8.75 per line in support for ILEC "A's" 800 lines and $10 per line of support for CETC "B's" 200 lines.

We appreciate the Commission's attention to clarifying whether the operation of this section of its rules is what was intended or whether some other outcome should result. Please contact us if there are any questions regarding our request or if there is anything further we can do for you.

Sincerely,

Robert Haga
Secretary & Treasurer

RH:cah:\

Enclosure

cc: Craig Brown
Lisa Zaina
Tom Power
Linda Kinney
Kyle Dixon
Kevin Martin
Paul Gallant

2 47 C.F.R. §§ 36.611(h), 54.307(b).
3 47 C.F.R. §§ 54.201-54.207.
4 47 C.F.R. § 54.307(a)(1).
5 47 C.F.R. § 54.307(a)(4).